

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: **Darsalyn Salmon v Randall Smith**

Docket No. **276573**

L.C. No. **99-009368-DM**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),
orders:

The claim of appeal and motion for extension of time to filed appellant's brief are DISMISSED by for lack of jurisdiction because the appellant is not appealing that part of the February 13, 2007 order that falls within MCR 7.202(6)(a)(iii), see MCR 7.203(A), and the remaining part of the order does not fall within MCR 7.202(6)(a)(iv). If it was the intent of the Supreme Court to make every postjudgment order that assessed attorney fees a final order under MCR 7.202(6)(a)(iv), the court rule would simply read, "a postjudgment order awarding or denying attorney fees and costs." However, by adding the language "under MCR 2.403, MCR 2.405, MCR 2.625 or other law or court rule" ..." the Supreme Court was clearly limiting the type of postjudgment order regarding attorney fees and costs. MCR 2.403, MCR 2.405, and MCR 2.625 all involve attorney fees and costs incurred prior to entry of the MCR 7.202(6)(a)(i) final order. Pursuant to the principle of *ejus generis* when a nonspecific phrase follows specific examples, the unnamed must be of the same nature as the specifically named items. That means the "other law or court rule" must involve attorney fees and costs incurred prior to entry of the MCR 7.202(6)(a)(i) final order. Examples would include attorney fees and costs under the Elliott-Larson Act, Open Meeting Act, Freedom of Information Act, and MCR 2.114(F). In this case the attorney fees were incurred years after the MCR 7.202(6)(a)(i) final order. The Court finds that the Supreme Court order in *Williams v AAA Michigan*, 477 Mich 853(2006) is not applicable because it does not discuss the phrase, "under MCR 2.403, MCR 2.405, MCR 2.625 or other law or court rule." Any appeal by appellant regarding attorney fees must be by application for leave to appeal.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 25 2007

Date

Sandra Schultz Mengel
Chief Clerk